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ROBERT J. YORIO (SBN 93178)
ryorio@carrferrell.com
COLBY B. SPRINGER (SBN 214868)
cspringer@carrferrell.com
CHRISTINE S. WATSON (SBN 218006)
cwatson@carrferrell.com
CARR & FERRELL LLP
2200 Geng Road
Palo Alto, California 94303
Telephone: (650) 812-3400
Facsimile: (650) 812-3444

Attorneys for Plaintiff
ACTICON TECHNOLOGIES LLC

MICHAEL J. BETTINGER (SBN 122196)
CHIEN-WEI CHOU (SBN 166798)
ANUP TIKKU (SBN 184612)
K&L GATES
55 Second Street, Suite 1700
San Francisco, CA 94105
Phone: (415) 882-8200
Fax: (415) 882-8220
mike.bettinger@klgates.com
chris.chou@klgates.com
anup.tikku@klgates.com

Attorneys for Defendants
CNET TECHNOLOGY CORP.,
CNET TECHNOLOGY, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ACTICON TECHNOLOGIES LLC,

Plaintiff,

v.

PRETEC ELECTRONICS CORP., a California
corporation; C-ONE TECHNOLOGY
CORPORATION, a foreign corporation; CNET
TECHNOLOGY CORP., a California
corporation; CNET TECHNOLOGY, INC., a
foreign corporation; and MACE GROUP, INC.,
d/b/a MACALLY PERIPHERALS, INC., a
California corporation, and MARGI SYSTEMS,
INC., a California corporation,

Defendants.

CASE NO. C 06 4679 JF (HRL)

STIPULATED PROTECTIVE
ORDER

AS AMENDED BY THE COURT

STIPULATED PROTECTIVE ORDER

IT IS HEREBY ORDERED that the following Protective Order be entered in this matter and that the parties shall follow the procedures set forth below with respect to information, documents, or things produced in this litigation:

1. This Protective Order shall be applicable to and govern all depositions, documents, information or things produced in response to requests for production of documents, answers to interrogatories, responses to requests for admissions and all other discovery taken pursuant to the Federal Rules of Civil Procedure, as well as testimony adduced at trial or other hearings, matters in evidence and other information that the disclosing party designates as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY" hereafter furnished, directly or indirectly, by or on behalf of any party or any non-party witness in connection with this action. As used herein, "disclosing party" shall refer to the parties to this action and to third parties who give testimony or produce documents or other

No confidentiality designation may be made without a good faith determination that the information. material warrants protection under Federal Rule of Civil Procedure 26(c).

2. Subject to Section 13 hereof, the following information may be designated as "CONFIDENTIAL": any trade secret or other confidential research, design, development, financial, or commercial information contained in any document, discovery response or testimony, or any other information which a party in good faith believes should be treated as "CONFIDENTIAL".

3. Subject to Section 13 hereof, the following information may be designated as "HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY": any trade secret or other confidential research, design, development, or commercial information contained in any document, discovery response, or deposition testimony that is entitled to a higher level of protection due to its commercial sensitivity, or any other information which a party in

1 good faith believes should be treated as " HIGHLY CONFIDENTIAL - ATTORNEYS
2 EYES ONLY". Certain sensitive business and technical information that could provide a
3 competitive advantage to the receiving party shall be designated and treated as "HIGHLY
4 CONFIDENTIAL - OUTSIDE COUNSEL ONLY."

5 4. A disclosing party may also designate materials as "CONFIDENTIAL,"
6 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "HIGHLY
7 CONFIDENTIAL - OUTSIDE COUNSEL ONLY" if it contains information that the
8 disclosing party, in good faith, believes is confidential or proprietary to a third-party.
9 Material designated "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS'
10 EYES ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY" shall be
11 used by the parties to this litigation solely for the purpose of conducting this litigation, and
12 not for any other purpose whatsoever.

13 5. Disclosing parties shall designate "CONFIDENTIAL," "HIGHLY
14 CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL -
15 OUTSIDE COUNSEL ONLY" information as follows:

16 (a) In the case of discovery responses and the information contained therein,
17 designation shall be made by placing the following legend on every page of any such
18 document prior to production: "CONFIDENTIAL," "HIGHLY CONFIDENTIAL -
19 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL
20 ONLY." Except as provided in paragraph fourteen (14), in the event that a party
21 inadvertently fails to stamp or otherwise designate a document or other information as
22 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or
23 "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY" at the time of its
24 production, that party shall have five (5) business days after such production to so stamp
25 or otherwise designate the document or other information.

1 (b) In the event that either party elects to produce documents for inspection
2 only pursuant to FRCP 34(a), all original documents produced for inspection shall be
3 treated as "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY" for a period not
4 to exceed five (5) business days after the receiving party inspecting the documents has
5 indicated the documents it desires to be copied. After a receiving party inspecting the
6 documents has indicated the documents it desires to be copied, and before such copies are
7 provided to the requesting party, the producing party shall have a reasonable time, not to
8 exceed the aforementioned five (5) business days, to review the copied documents and
9 designate them as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS'
10 EYES ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY" pursuant
11 to the terms of this Order.

12 (c) In the case of depositions, designation of the portion of the transcript
13 (including exhibits) that contains "CONFIDENTIAL," "HIGHLY CONFIDENTIAL -
14 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL
15 ONLY" information shall be made by a statement to such effect on the record in the
16 course of the deposition or, upon review of such transcript, by counsel for a party within
17 five (5) business days after counsel's receipt of the transcript.

18 (d) Transcripts of depositions will not be filed with the Court unless it is
19 necessary to do so for purposes of motion hearings, trial, or other matters. If a deposition
20 transcript is filed and if it contains "CONFIDENTIAL," "HIGHLY CONFIDENTIAL -
21 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL
22 ONLY" information the transcript shall bear the appropriate legend on the caption page
23 and shall be filed under seal.

24 (e) Any "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS'
25 EYES ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY"

1 information produced in a non-paper media (e.g., videotape, audiotape, computer disk,
 2 etc.) may be designated as such by labeling the outside of such non-paper media as
 3 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or
 4 "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY." In the event a receiving
 5 party generates any "hard copy," transcription, or printout from any such designated non-
 6 paper media, such party must stamp each page "CONFIDENTIAL," "HIGHLY
 7 CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL -
 8 OUTSIDE COUNSEL ONLY" and the hard copy, transcription or printout shall be
 9 treated as it is designated.

10 6. If any information designated "CONFIDENTIAL," "HIGHLY CONFIDENTIAL -
 11 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL
 12 ONLY" is filed or submitted to the Court, it shall be produced in sealed envelopes or
 13 containers indicating the following:

- 14 (a) the case caption;
- 15 (b) the nature of the contents therein; or
- 16 (c) the words "CONFIDENTIAL [or "HIGHLY CONFIDENTIAL -
 17 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL
 18 ONLY"] - NOT TO BE OPENED EXCEPT BY ORDER OF THE COURT."

19 Any party that wishes to file material under seal must comply with Civil Local Rule 79-5.

20 7. Disclosure of all "CONFIDENTIAL" information shall be limited to:

- 21 (a) The outside attorneys working on this action, on behalf of any party, and
 22 any paralegal assistants, stenographic and clerical employees working under the direct
 23 supervision of such counsel;
- 24 (b) The employees of the parties who are required to work directly on this
 25 litigation, only to the extent necessary to perform such work.

1 (c) Officers of the Court and supporting personnel or officers of any appellate
2 court to which an appeal may be taken in this litigation or in which review is sought,
3 including necessary stenographic and clerical personnel (e.g. court reporters);

4 (d) Other qualified reporters taking and videographers recording testimony
5 involving such information and necessary stenographic and clerical personnel thereof;

6 (e) Any person who was an author or recipient of the "CONFIDENTIAL"
7 information prior to the commencement of this litigation, but if the person is not an
8 employee of the party to which the "CONFIDENTIAL" information belongs, such person
9 may not retain a copy of such information;

10 (f) Any person of whom testimony is taken regarding the "CONFIDENTIAL"
11 information, except that if the person is not an employee of the party to which the
12 "CONFIDENTIAL" information belongs, such person may only be shown copies of
13 "CONFIDENTIAL" information during his/her testimony, and may not retain a copy of
14 such "CONFIDENTIAL" information; and

15 (g) Any person who is expressly retained by any outside attorney described in
16 paragraph 7(a) to assist in preparation of this action for trial, who is not employed by,
17 affiliated with (whether as a consultant or otherwise), controlled by, agents of, or
18 materially interested in any party or any competitor of any party, with disclosure only to
19 the extent necessary to perform such work;

20 8. Information designated as "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
21 ONLY" shall be used solely for the purposes of this litigation between the parties hereto.
22 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" information shall not be
23 disclosed, except by the prior written consent of the disclosing party or third party, or
24 pursuant to an order of this Court, to any person other than the following:
25

1 (a) The outside attorneys working on this action on behalf of any party, and
2 any paralegal assistants, stenographic and clerical employees working under the direct
3 supervision of such counsel.

4 (b) One designated and disclosed in-house counsel or officer of each party who
5 is required to work directly on this litigation, only to the extent necessary to perform such
6 work.

7 (c) Officers of the Court and supporting personnel or officers of any appellate
8 court to which any appeal may be taken in this litigation or in which review is sought,
9 including necessary stenographic and clerical personnel (e.g. court reporters).

10 (d) Other qualified reporters taking and videographers recording testimony
11 involving such information and necessary stenographic and clerical personnel thereof;

12 (e) Any person who is an author or recipient of the "HIGHLY
13 CONFIDENTIAL - ATTORNEYS EYES ONLY" information prior to the
14 commencement of this litigation, but if the person is not an employee of the party to
15 which the "HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY" information
16 belongs, such person may not retain a copy of such information; and

17 (f) Any person who is expressly retained by any outside attorney described in
18 paragraph 8(a) to assist in preparation of this action for trial, who is not employed by,
19 affiliated with (whether as a consultant or otherwise), controlled by, agents of, or
20 materially interested in any party or any competitor of any party, with disclosure only to
21 the extent necessary to perform such work.

22 9. Information designated as "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL
23 ONLY" shall be used solely for the purposes of this litigation between the parties hereto.
24 "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY" information shall not be
25

1 disclosed, except by the prior written consent of the disclosing party or third party, or
2 pursuant to an order of this Court, to any person other than the following:

3 (a) The outside attorneys working on this action on behalf of any party, and
4 any paralegal assistants, stenographic and clerical employees working under the direct
5 supervision of such counsel.

6 (b) Officers of the Court and supporting personnel or officers of any appellate
7 court to which any appeal may be taken in this litigation or in which review is sought,
8 including necessary stenographic and clerical personnel (e.g. court reporters).

9 (c) Other qualified reporters taking and videographers recording testimony
10 involving such information and necessary stenographic and clerical personnel thereof;

11 (d) Any person who is an author or recipient of the "HIGHLY
12 CONFIDENTIAL - OUTSIDE COUNSEL ONLY" information prior to the
13 commencement of this litigation, but if the person is not an employee of the party to
14 which the "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY" information
15 belongs, such person may not retain a copy of such information; and

16 (e) Any person who is expressly retained by any outside attorney described in
17 paragraph 9(a) to assist in preparation of this action for trial, who is not employed by,
18 affiliated with (whether as a consultant or otherwise), controlled by, agents of, or
19 materially interested in any party or any competitor of any party, with disclosure only to
20 the extent necessary to perform such work.

21 10. Nothing herein shall restrict any party's use of its own "CONFIDENTIAL,"
22 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "HIGHLY
23 CONFIDENTIAL - OUTSIDE COUNSEL ONLY" information.

24 11. Prior to disclosure of any "CONFIDENTIAL" information which belongs to an
25 opposing party to any persons in paragraphs 7(b), 7(e), 7(f), and 7(g), prior to disclosure

1 of any "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" information which
2 belongs to an opposing party to any persons in paragraphs 8(b), 8(e) and 8(f), and prior to
3 disclosure of any "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY"
4 information which belongs to an opposing party to any persons in paragraphs 9 (d) and
5 9(e), the procedure set forth in paragraph 12 shall be followed.

6 12. Prior to the disclosure of "CONFIDENTIAL," "HIGHLY CONFIDENTIAL -
7 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL
8 ONLY" information which belongs to an opposing party to persons in paragraphs 7(b),
9 7(e), 7(f), 7(g), 8(b), 8(e), 8(f), 9(d) or 9(e) the outside counsel in this litigation for the
10 party making the disclosure shall advise each person that the information is
11 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or
12 "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY", can only be discussed
13 with persons authorized by this Protective Order to view the material and can only be used
14 for purposes of this litigation. Counsel shall retain, but need not disclose, a copy of a
15 signed undertaking of each person to whom disclosure is made under paragraphs 7(e),
16 7(f), and 7(g). Counsel shall retain and disclose to the other party a copy of a signed
17 undertaking of each person to whom disclosure is made under paragraph 8(b), 8(e), 8(f),
18 9(d) and 9(e), except that the disclosure of the signed undertaking with respect to retained
19 experts may be made at the time such experts are designated in the litigation. The written
20 undertaking, which shall be in the form of Exhibit A hereto, shall acknowledge that he or
21 she has read and understands this Protective Order, and agrees to comply with this
22 Protective Order.

23 13. A party shall not be obligated to challenge the propriety of a "CONFIDENTIAL,"
24 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "HIGHLY
25 CONFIDENTIAL - OUTSIDE COUNSEL ONLY" designation at the time made, and

1 failure to do so shall not preclude a subsequent challenge thereto. In the event that any
 2 party to this litigation disagrees at any stage of these proceedings with such designation,
 3 such party shall provide to the producing party written notice of its disagreement with the
 4 designation. Within five (5) business days after receiving any written notice, the
 5 producing party shall respond to the challenging party identifying in writing the bases for
 6 the asserted designation. The parties shall first try to dispose of such dispute in good faith
 7 on an informal basis. If the dispute cannot be resolved, the party challenging the
 8 designation may request appropriate relief from the Court, but in any event, such relief
 9 from the Court shall not be requested before ten (10) business days after the producing
 10 party is served with said written notice. The burden is on the party seeking protection to show
 11 that it is warranted.

12 14. Failure of counsel to designate or mark any document, thing, or testimony as
 13 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or
 14 "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY" information as provided
 15 above shall not preclude the disclosing party from thereafter in good faith making such
 16 designation and requesting the receiving party to so mark and treat such documents and
 17 things so designated even after the expiration of the "five (5) business days" designation
 18 period described in paragraph 5(a). The receiving party, however, shall incur no liability
 19 for disclosures made prior to notice of such designations.

20 15. If "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
 21 ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY" information is
 22 disclosed to any person other than in the manner authorized by this Protective Order, the
 23 person responsible for the disclosure shall immediately bring all pertinent facts relating to
 24 such disclosure to the attention of counsel for all parties, without prejudice to other rights
 25 and remedies of any party, and shall make every effort to prevent further disclosure by it
 or by the person who was the recipient of such information.

16. ~~The Clerk of the Court is directed to maintain under seal all documents and all transcripts of deposition testimony filed with this Court in this litigation by any party that are, in whole or in part, designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY", including all pleadings, deposition transcripts, exhibits, discovery responses or memoranda purporting to reproduce or paraphrase such information. The person filing such material shall designate to the Clerk that all or a designated portion thereof is subject to this Protective Order and is to be kept under seal, except that upon the failure of the filing party to so designate, any party may do so.~~

17. In the event that any "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY" information is used in any court proceeding in connection with this litigation, it shall not lose its "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY" status through such use, and the parties shall take all steps reasonably required to protect its confidentiality during such use.

18. The inadvertent production in the course of discovery in this action of any document or information (whether or not designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY") shall not be deemed to waive whatever attorney-client privilege, work product protection or other privilege or immunity that would otherwise attach to the document or information produced or to other documents or information, as long as the producing party or person, promptly after discovery, notifies the other party or parties of the claim of privilege or other protection or immunity. Upon such notice, the other party or parties shall promptly destroy all copies of the documents or information

1 referred to, including any summaries thereof, and notify the producing party that it has
2 done so. Such destruction and notice shall not constitute an acknowledgment that the
3 claimed document or information is in fact privileged or entitled to protection or immunity
4 and does not preclude the receiving party from seeking to compel production of the
5 materials for reasons other than its inadvertent production.

6 19. Within 60 days after the final termination of this litigation, counsel for each Party
7 shall return to the originating source, or certify in writing the destruction of, all
8 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or
9 "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY" information of the
10 opposing party or parties and all copies thereof; provided, however, outside counsel of
11 record for each party may retain attorney work product containing such information, and
12 may petition the Court to retain one copy of each document for good cause shown.

13 20. Nothing herein shall prevent any party from moving the court for modification of
14 this Protective Order for good cause.

15 21. Except as specifically provided herein, the terms, conditions, and limitations of
16 this Protective Order shall survive the termination of this action.

17 22. Nothing herein shall be deemed to constitute a waiver of any objection a producing
18 party may have to any request for production of documents or other requested discovery.
19 Nothing herein shall prevent any party from objecting to production of documents or
20 objecting to other discovery requests on any available grounds, or from seeking alternative
21 protective orders from the Court.

22 23. The court shall retain jurisdiction to enforce the terms of this order for 6 months
23 after final termination of the action.

24 ///

25 ///

1 IT IS SO ORDERED this _ 10 _ day of May, 2007

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4 
5 HOWARD R. LLOYD
6 UNITED STATES MAGISTRATE JUDGE

7 Approved as to form:

8
9 K&L GATES

10 By _____ /s/ _____ April 20, 2007
11 Anup Tikku
12 Attorneys for Defendants
13 CNET TECHNOLOGY CORP. and
14 CNET TECHNOLOGY, INC.

15 CARR & FERRELL LLP

16
17 By _____ /s/ _____ April 20, 2007
18 Robert J. Yorio
19 Attorneys for Plaintiff
20 ACTICON TECHNOLOGIES LLC.
21
22
23
24
25

EXHIBIT A
UNDERTAKING

I acknowledge that I, _____
(Name), of _____ (Place and
Position of Employment), am about to receive "CONFIDENTIAL," "HIGHLY
CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL -
OUTSIDE COUNSEL ONLY" information supplied by _____
(Party). I certify that I understand that such information will be provided to me pursuant
to the terms and restrictions of the PROTECTIVE ORDER of _____, 2007,
in *Acticon Technologies LLC v. Pretec Electronics Corp., et. al., Case No. C 06-4679 JF*
(HRL), in the United States District Court for the Northern District of California. I further
represent that I have been given a copy of and have read the PROTECTIVE ORDER, that
I agree to be bound by all of its applicable terms, and that I submit to the jurisdiction of
the United States District Court for the Northern District of California for matters relating
to this Undertaking and the PROTECTIVE ORDER. I also understand that documents
and/or information bearing any "CONFIDENTIAL," "HIGHLY CONFIDENTIAL -
ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL
ONLY" designation, and all copies, summaries, notes and other records that may be made
regarding such documents and/or information, shall be disclosed to no one other than
persons qualified under the PROTECTIVE ORDER to have access to such information.

I understand and acknowledge that violation of this Undertaking or the
PROTECTIVE ORDER may be punishable by Contempt of Court.

DATED this _____ day of _____, 2007.

By: _____